

Stuart Mill Bay Land Acquisition Near Anaconda

### Funds Status as of January 2003

As of January 2003, interest revenues to the UCFRB Restoration Fund since the initial deposit of \$119.8 million in July 1999 have totaled \$30.7 million and expenditures totaled \$9.2 million, resulting in an unspent fund balance of \$141.3 million. Approximately \$13.1 million of this unspent balance is committed to approved grant projects. As of January 2003, interest revenues to the \$10 million deposited in Silver Bow Creek Reserve Fund in July 1999 totaled \$2.9 million, and the unspent fund balance is \$12.9 million.

Photo taken by Todd Kaplan, courtesy of "The Conservation Fund".

For more information on UCFRB natural resource damage litigation and restoration activities, contact Kathy Coleman of the Natural Resource Damage Program at 406-444-0205 or view the Program's website at [www.doj.state.mt.us](http://www.doj.state.mt.us) under "Montana Lands".


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## Fact Sheet on Upper Clark Fork River Basin Natural Resource Damage Litigation and Restoration


Introduction

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Decades of mining and mineral processing operations in and around Butte and Anaconda released substantial quantities of hazardous substances into the Upper Clark Fork River Basin between Butte and Milltown. These hazardous substances extensively injured the area's natural resources. On behalf of Montanans, the State filed a natural resource damage lawsuit, which was partially settled in 1998. As a result, the Atlantic Richfield Co. (ARCO) paid the State approximately \$130 million to restore the Basin's injured public natural resources, particularly its fish, wildlife, vegetation, groundwater, and rivers and streams. This fact sheet provides background on the lawsuit, the 1998 partial settlement, and the framework for spending these restoration funds.



Silver Bow Creek Injured Area Near Ramsay



Anaconda Smelter Injured Area

### Natural Resource Damage Lawsuit

In 1983, the Montana Departments of Fish, Wildlife & Parks and Health & Environmental Sciences filed a lawsuit against ARCO to recover damages for injuries to the public's natural resources in the Upper Clark Fork River Basin (UCFRB). The Montana v. ARCO lawsuit, brought under federal and state Superfund laws, contended that decades of mining and smelting in the Butte and Anaconda areas by ARCO and its predecessors, most notably the Anaconda Company, had greatly harmed the public's natural resources in the Basin and deprived Montanans of their use.

The state and federal Superfund laws provide a two-pronged approach for dealing with areas contaminated by hazardous substances:

- remediation - cleaning up the hazardous substances so that the public and environment are protected against further harm; and
- restoration - returning the injured resources to their uncontaminated or "baseline" condition -- the condition the resource would have been in had the hazardous substance not been released.

There are two types of natural resource damages under Superfund:

- "Restoration Cost Damages" are the costs necessary following remediation to restore the injured natural resource and/or the services it provides to its baseline condition. "Services" are the biological and physical functions a resource provides for the public or another resource. For example, fish provide recreational service for the public and also provide food for otters, eagles and other predators.
- "Compensable Value Damages" are the costs to compensate the public for the lost use of the natural resources and their intrinsic value. These are measured by estimating the value of the benefits the resources would have supplied if the resources had not been injured. An example is the value of lost recreational fishing and hunting use.

The Montana v. ARCO lawsuit did not cover economic harm to private entities caused by these releases of hazardous substances, such as loss of agricultural productivity. Nor did the lawsuit cover the loss of land due to mining.





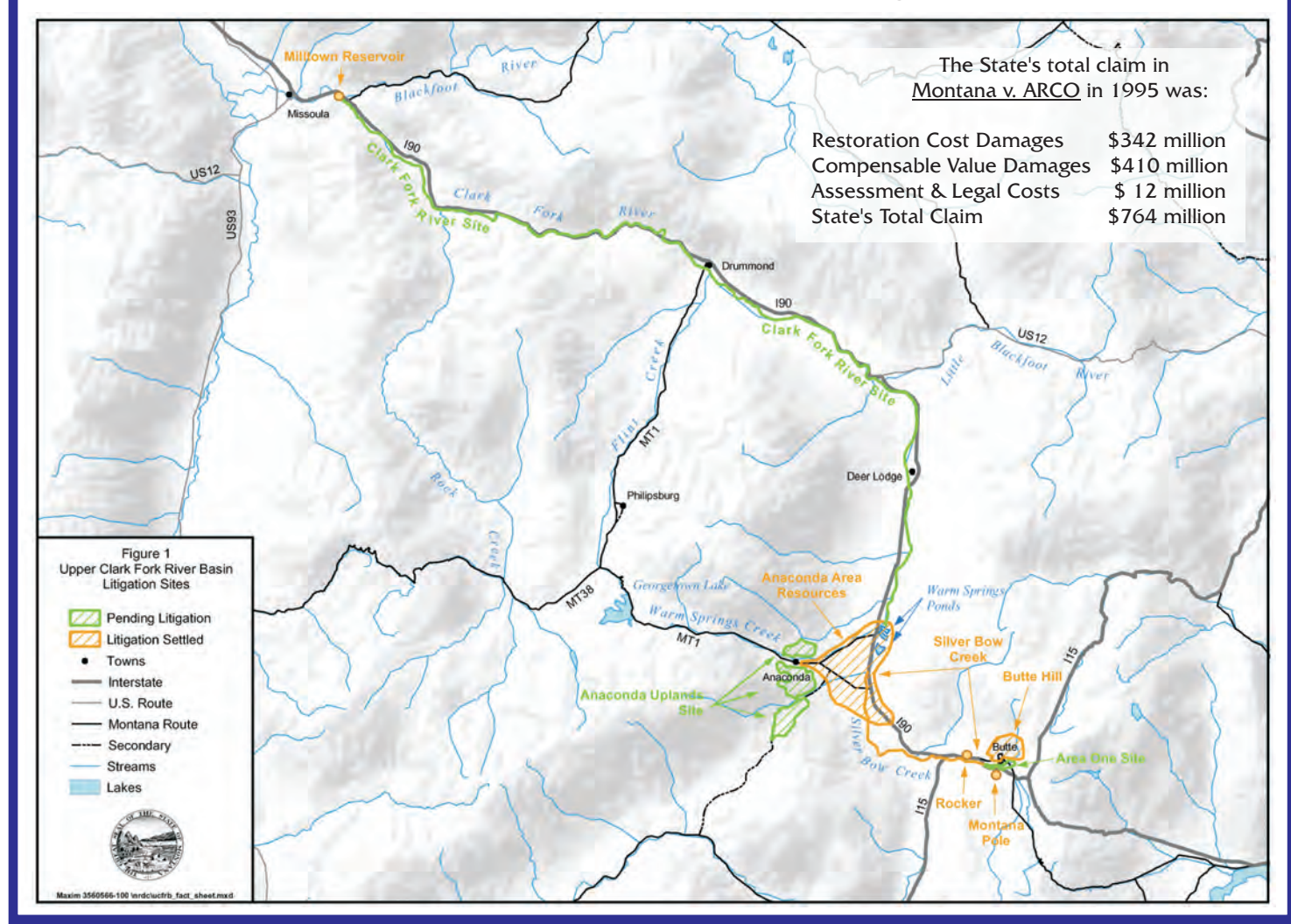
**Natural Resource Damage Assessment**

In 1990, the Natural Resource Damage Program was created to pursue Montana's lawsuit against ARCO. In 1991, the State began a natural resource damage assessment to determine the injuries to natural resources and the amount of restoration and compensable damages to be sought under this lawsuit. Some of the most qualified scientists in the United States, including biologists from the Montana Department of Fish, Wildlife & Parks, designed and performed the assessment. In 1995, the State issued its assessment, which included over 40 separate reports describing and quantifying the injuries and damages.

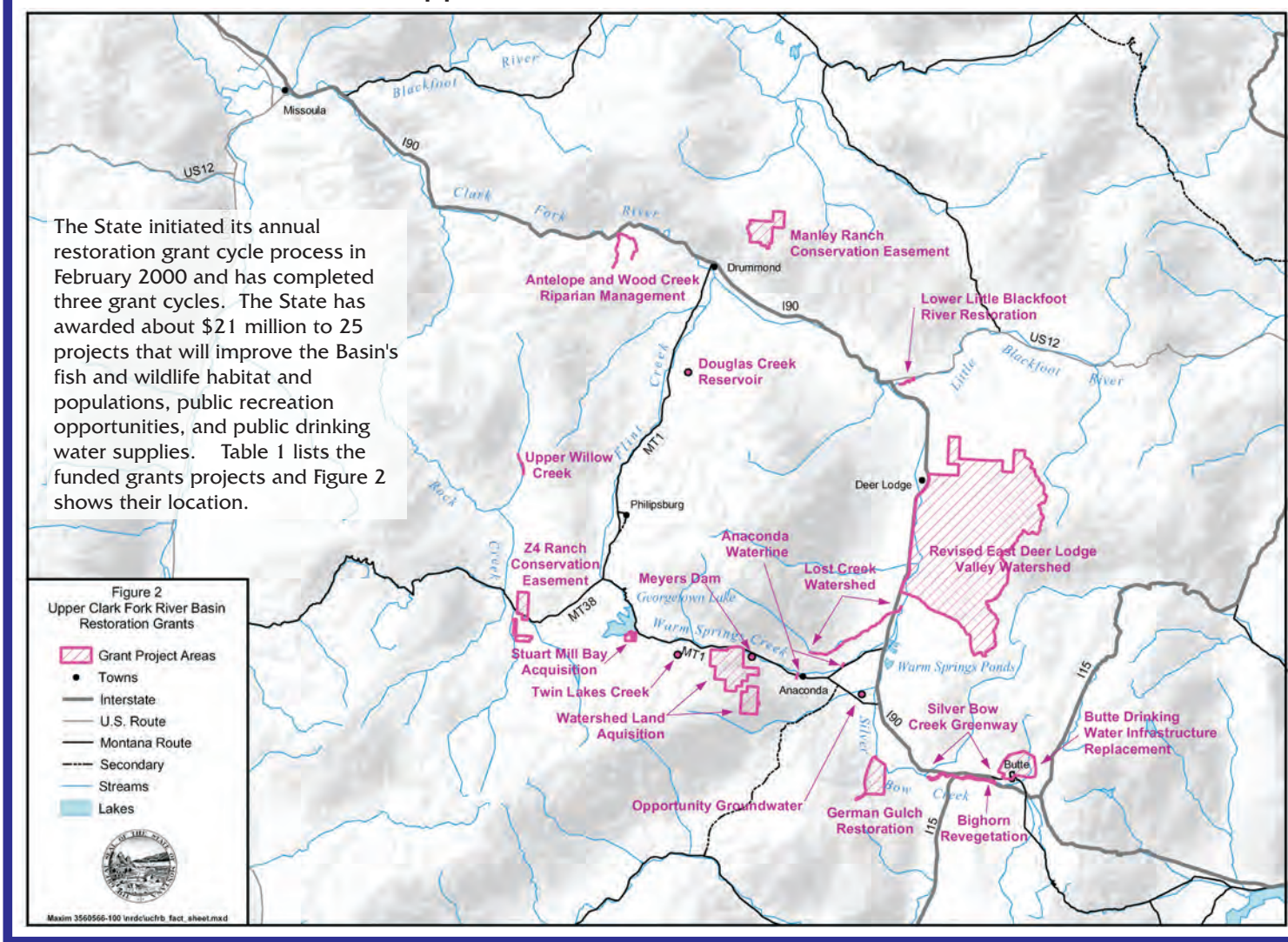
The assessment found severe and widespread contamination of the area's groundwater, streams and rivers, and wildlife habitat. Specifically, more than 600,000 acre-feet of groundwater in the Basin has been contaminated, mainly in Butte and around Anaconda. Contaminated groundwater was also found in Rocker and Milltown. Contamination has caused the loss of trout in Silver Bow Creek and drastically reduced trout numbers in the Upper Clark Fork River. Contamination in the soil has caused the loss of plants, wildlife and wildlife habitat along Silver Bow Creek and the Upper Clark Fork River, at Opportunity Ponds, and in an 18 square-mile area in the mountains near Anaconda. Figure 1 indicates the general location of the nine affected areas covered under the Montana v. ARCO lawsuit.

The assessment also identified and quantified the value of services these injured resources formerly provided. These services included hunting, the use of rivers and streams for fishing and recreation, the use of groundwater for drinking and agricultural resources, and the value people place on having a clean, healthy environment.

**FIGURE 1 Upper Clark Fork River Basin Litigation Sites**



**FIGURE 2 Upper Clark Fork River Basin Restoration Sites**



**2000 Grant Cycle Projects**

Silver Bow Greenway	\$1,772,758
Revegetation of Silver Bow Creek	\$110,800
Bridger Plant Materials Seed Research	\$141,439
Lost Creek Watershed Project	\$518,382
Watershed Land Acquisition	\$3,764,231
Z-4 Ranch Conservation Easement	\$10,000
Watershed Planning Database	\$9,550
Manley Ranch Conservation Easement	\$608,048
<b>TOTAL</b>	<b>\$6,935,208</b>

**2001 Grant Cycle Projects**

Silver Bow Creek Greenway	\$1,206,755
Watershed Land Acquisition	\$2,067,073
Butte Waterline	\$1,165,795
Antelope Creek Riparian Project	\$10,000
East Deer Lodge Valley Watershed Project	\$135,941
<b>TOTAL</b>	<b>\$4,585,564</b>

**TABLE 1**

**2002 Grant Cycle Projects**

Silver Bow Creek Greenway	\$4,955,273
Butte Waterline	\$1,168,842
Anaconda Waterline	\$749,942
Stuart Mill Bay Acquisition	\$2,000,000
<b>TOTAL</b>	<b>\$8,874,057</b>

**Project Development Grants**

Opportunity Groundwater Assessment	\$309,268
Douglas Creek	\$10,000
Lower Little Blackfoot River	\$25,000
German Gulch	\$25,550
Upper Willow Creek	\$25,000
Myers Dam Diversion	\$11,710
Twin Lakes Creek	\$11,056
<b>TOTAL</b>	<b>\$417,584</b>



## 1999 Partial Settlement of Montana v. ARCO

The lawsuit went to trial in March 1997 in U.S. District Court in Great Falls. At the same time, however, court-ordered settlement talks were continuing. Those talks resulted in a settlement filed with the Court in June 1998 that covered a substantial portion of the State's claims. That settlement, in the form of a Consent Decree, was submitted for public comment and then approved by the Court in April 1999. The settlement required ARCO to pay the State a total of \$215 million, plus interest from April 1998. Under the settlement terms, ARCO paid:

- \$86 million (including \$6 million in interest) to the State to remediate contamination from hazardous substances in the Silver Bow Creek area west and north of Butte, as called for in the Streamside Tailings Operable Unit remediation plan adopted by the Montana Department of Environmental Quality and the U.S. Environmental Protection Agency;



Upper Clark Fork River Tailings Deposit

- \$129 million (including \$9 million in interest) to the State for natural resource damages. \$10 million of this amount was set aside in the Silver Bow Creek Reserve Fund to be used, if necessary, to complete the remedial cleanup of Silver Bow Creek. The remaining \$119 million was set aside in the UCFRB Restoration Fund for restoration of the public's natural resources in the Clark Fork Basin; and
- \$15 million to reimburse the State for all of its costs in bringing the lawsuit through Dec. 31, 1997.

In return for these payments, the State released ARCO of liability for all the compensable value claims and the restoration damage claims for the Butte Hill, Silver Bow Creek, Montana Pole, Milltown, Opportunity Ponds and Anaconda Ponds, and Rocker sites, which are referred to as the "Step One" sites.

Under the settlement, the State retained its restoration damage claims for three other sites, referred to as the "Step 2" sites, which are shown in Figure 1:

- 1) Smelter Hill Area Upland Resources ("Anaconda Uplands"): The Anaconda Uplands is an area approximately 18 square miles north and south of Anaconda that is comprised of portions of Smelter Hill, Stucky Ridge, and the Mount Haggin Game Management Area.
- 2) Upper Clark Fork River Aquatic and Riparian Resources ("Upper Clark Fork River"): The Upper Clark Fork River site encompasses the floodplain of the Upper Clark Fork River from the Warm Springs Ponds to the Milltown Reservoir; and



Mt. Haggin, Part of the Anaconda Injured Area

- 3) Butte Area One Ground and Surface Water Resources ("Butte Area One"): Butte Area One extends from the upper end of the Metro Storm Drain in Butte to the west or downstream end of the former location of the Colorado Tailings along Silver Bow Creek. Butte Area One is a part of the Butte Priority Soils Operable Unit, which encompasses the part of Butte north of Silver Bow Creek, east of Montana Tech, the town of Walkerville, and extends south from Silver Bow Creek to Timber Butte.

The total value of these three claims is estimated at about \$200 million. The Anaconda Uplands claim is currently being litigated. The U.S. Environmental Protection Agency's final remedy decisions for the Upper Clark Fork River and Butte Priority Soils operable units are scheduled to occur in late 2003. The parties expect to enter into negotiations in an attempt to settle these claims after those final remedies for these sites are determined.

## Restoration of Injured Resources

The Superfund laws require that any natural resource damages recovered in the lawsuit be used for the restoration, replacement, or acquisition of the equivalent of the injured resources.

- ▶ Restoration refers to actions taken, in addition to remediation, to return the injured resources and services to their baseline condition. For example, planting additional grasses, shrubs and trees in the Silver Bow Creek floodplain that would not be planted under remediation would help restore the area.



New Plantings Along Silver Bow Creek

- ▶ Replacement actions create or improve resources and services that are the same as or substantially similar to the ones that have been injured or lost, but away from the immediate site of injury. For example, improving a streambank and aquatic habitat in a tributary stream to Silver Bow Creek constitutes replacement.
- ▶ Acquiring equivalent resources involves obtaining unimpaired resources comparable to those that are injured. For example, acquiring land along an uncontaminated tributary stream constitutes acquiring an equivalent resource.

In early 2000, the State finalized the UCFRB Restoration Plan Procedures and Criteria, which provides the framework for expending the 1999 Settlement funds. The State elected to establish an annual grant process in which various entities could apply for restoration funds based on procedures and criteria outlined in this document. Governmental agencies, private entities and private individuals are eligible to apply. Projects must be located within the Basin but outside of the three injured areas that are still subject of litigation claims. As those litigation claims are settled, projects in those areas may be considered for funding. Current policy restricts available grant funds to interest income only.

As Trustee of the State's public natural resources, the Governor makes the final funding decisions on grant projects. Two councils advise the Governor on restoration matters and funding:

### 1) **The UCFRB Remediation and Restoration Education Advisory Council:**

In 1998, Governor Racicot established the UCFRB Remediation and Restoration Education Advisory Council ("Advisory Council"). This Council's mission is to facilitate public dialogue, promote public understanding and advise the Governor on remediation and restoration efforts in the Basin. The Advisory Council consists of ten citizen volunteers representing the public and various interest groups, and five government representatives. The Council meets regularly at various locations in the Basin. Major Council activities include providing outreach on remediation and restoration issues and activities in the Basin, reviewing grant applications and recommending grant funding to the Governor, and reviewing and recommending draft guidance and policies related to the expenditure of Restoration funds.



### 2) **The UCFRB Trustee Restoration Council:**

The Council is responsible for recommending to the Governor annual restoration work plans to be funded with the natural resource damages recovered by the State in Montana v. ARCO. This Council consists of the Governor's Chief of Staff, the Attorney General, the Chairman of the Advisory Council, and the directors of the State's three natural resource agencies.

Since the 1999 partial settlement of Montana v. ARCO, the Natural Resource Damage Program, which is administratively attached to the Montana Department of Justice, reorganized into two components. The litigation component continues to prosecute the State's three remaining natural resource damage claims. The restoration component administers the grant process set up by the UCFRB Restoration Plan Procedures and Criteria, which was updated in 2002. Program responsibilities include screening and reviewing all proposed projects; preparing draft funding recommendations in annual work plans; and monitoring and accounting for restoration work which is performed.